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14 Luis Ochoa

15
16 UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF ARIZONA

18 Luis Ochoa,

19 Case No.:

20 Plaintiff,

21 **COMPLAINT**

22 vs.

23 Ally Financial, Inc.,

24 **JURY TRIAL DEMANDED**

25 Defendant.

26

27

28

1 Plaintiff, Luis Ochoa (hereafter “Plaintiff”), by undersigned counsel, brings the
2 following complaint against Ally Financial, Inc. (hereafter “Defendant”) and alleges
3 as follows:

5 **JURISDICTION**

6 1. This action arises out of Defendant’s repeated violations of the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

8 2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3) and 28
9 U.S.C. § 1331.

10 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
11 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or
12 where Defendant transacts business in this district.

16 **PARTIES**

17 4. Plaintiff is an adult individual residing in San Luis, Arizona, and is a
18 “person” as defined by 47 U.S.C. § 153(39).

19 5. Defendant is a business entity located in Detroit, Michigan, and is a
20 “person” as the term is defined by 47 U.S.C. § 153(39).

23 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

24 6. At all times mentioned herein where Defendant communicated with any
25 person via telephone, such communication was done via Defendant’s agent,
26 representative or employee.

1 7. At all times mentioned herein, Plaintiff utilized a cellular telephone
2 service and was assigned the following telephone number: 928-XXX-5969 (hereafter
3 “Number”).
4

5 8. Defendant placed calls to Plaintiff’s Number in an attempt to collect a
6 debt from someone other than Plaintiff.
7

8 9. The aforementioned calls were placed using an automatic telephone
9 dialing system (“ATDS”) and/or by using an artificial or prerecorded voice
10 (“Robocalls”).
11

12 10. Upon answering Defendant’s calls, Plaintiff heard a significant delay
13 before Defendant’s automated system attempted to connect Plaintiff with a live
14 representative.
15

16 11. Upon speaking with Defendant’s agent, Plaintiff learned that Defendant
17 was calling to speak with a person named Luis M. Ochoa who owns a 2015 Chevy
18 Tahoe.
19

20 12. Plaintiff’s full name is Luis Armando Ochoa and he owns a 2017 Jeep.
21

22 13. On multiple occasions, Plaintiff informed Defendant that it was calling
23 the wrong person.
24

25 14. Nevertheless, Defendant continued to call Plaintiff’s Number using an
26 ATDS at an excessive and harassing rate.
27
28

1 15. Defendant's calls directly and substantially interfered with Plaintiff's
2 right to peacefully enjoy a service that Plaintiff paid for and caused Plaintiff to suffer
3 a significant amount of anxiety, frustration and annoyance.
4

COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47
U.S.C. § 227, et seq.**

9 16. Plaintiff incorporates by reference all of the above paragraphs of this
10 complaint as though fully stated herein.

12 17. The TCPA prohibits Defendant from using, other than for emergency
13 purposes, an ATDS and/or Robocalls when calling Plaintiff's Number absent
14 Plaintiff's prior express consent to do so. *See* 47 U.S.C. § 227(b)(1).

16 18. Defendant's telephone system has the earmark of using an ATDS in that
17 Plaintiff, upon answering calls from Defendant, heard a significant period of silence
18 prior to being connected with a live representative.
19

20 19. Defendant called Plaintiff's Number using an ATDS without Plaintiff's
21 consent in that Defendant either never had Plaintiff's prior express consent to do so or
22 such consent was effectively revoked when Plaintiff informed Defendant that it was
23 calling the wrong number.
24

25 20. Defendant continued to willfully call Plaintiff's Number using an ATDS
26
27 knowing that it lacked the requisite consent to do so in violation of the TCPA.

21. Plaintiff was harmed and suffered damages as a result of Defendant's actions.

22. The TCPA creates a private right of action against persons who violate the Act. *See* 47 U.S.C. § 227(b)(3).

23. As a result of each call made in violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages.

24. As a result of each call made knowingly and/or willingly in violation of the TCPA, Plaintiff may be entitled to an award of treble damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant for:

- A. Statutory damages of \$500.00 for each call determined to be in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- B. Treble damages for each violation determined to be willful and/or knowing under the TCPA pursuant to 47 U.S.C. § 227(b)(3); and
- C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

1
2 DATED: November 14, 2017
3

TRINETTE G. KENT

4 By: /s/ Trinette G. Kent
5 Trinette G. Kent, Esq.
6 Lemberg Law, LLC
7 Attorney for Plaintiff, Luis Ochoa
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